

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #12	CCRB Case #: 201807315	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/23/2018 11:20 PM	Location of Incident: 1637 East 92nd Street	Precinct: 69	18 Mo. SOL 2/23/2020	EO SOL 2/23/2020	
Date/Time CV Reported Thu, 08/23/2018 11:53 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/04/2018 11:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andre Morris	15124	956955	069 PCT
2. POM Robert Gallagher	14960	957611	069 PCT
3. POM Jonathan Taveras	30195	953469	069 PCT
4. SGT Daniel Haggerty	01122	947767	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Marcel Francis	05943	948983	069 PCT
2. POM Felix Medina	06560	939008	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Daniel Haggerty	Abuse: Sergeant Daniel Haggerty stopped individuals.	
B.POM Andre Morris	Abuse: Police Officer Andre Morris threatened to arrest individuals.	
C.POM Andre Morris	Abuse: Police Officer Andre Morris threatened to arrest § 87(2)(b)	
D.SGT Daniel Haggerty	Abuse: Sergeant Daniel Haggerty frisked individuals.	
E.SGT Daniel Haggerty	Abuse: Sergeant Daniel Haggerty searched individuals.	
F.POM Andre Morris	Abuse: Police Officer Andre Morris frisked individuals.	
G.POM Andre Morris	Abuse: Police Officer Andre Morris searched individuals.	
H.POM Robert Gallagher	Discourtesy: Police Officer Robert Gallagher spoke discourteously to individuals.	
I.POM Andre Morris	Abuse: Police Officer Andre Morris searched the vehicle in which individuals were occupants.	
J.POM Jonathan Taveras	Off. Language: Police Officer Jonathan Taveras made remarks to an individual based upon race.	
K.POM Jonathan Taveras	Discourtesy: Police Officer Jonathan Taveras spoke discourteously to individuals.	
L.POM Andre Morris	Abuse: Police Officer Andre Morris threatened § 87(2)(b) with the use of force.	
M.POM Andre Morris	Abuse: Police Officer Andre Morris threatened Individuals with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
N.SGT Daniel Haggerty	Abuse: Sergeant Daniel Haggerty seized § 87(2)(b) s property.	

Case Summary

§ 87(2)(b) filed this complaint on behalf of himself and five unidentified male individuals via telephone during three telephone calls with the IAB Command Center on August 23, 2018, generating log number 18-33158. The CCRB received this case on September 4, 2018.

On August 23, 2018, at approximately 11:20 p.m., Sergeant Daniel Haggerty, Police Officer Robert Gallagher, and Police Officer Andre Morris of the 69th Precinct stopped individuals who were occupants of a vehicle double parked at 1637 East 92nd Street, in Brooklyn (**Allegation A: Abuse of Authority – Stop**, § 87(2)(g)). Police Officer Morris threatened to arrest individuals (**Allegation B: Abuse of Authority – Threat of Arrest**, § 87(2)(g)). Police Officer Morris threatened to arrest § 87(2)(b) (**Allegation C: Abuse of Authority – Threat of Arrest**, § 87(2)(g)). Police Officer Morris and Sergeant Haggerty frisked and searched individuals (**Allegations D, E, F and G: Abuse of Authority – Frisk and Search**, § 87(2)(g)). Police Officer Gallagher spoke discourteously to individuals (**Allegation H: Discourtesy – Word**, § 87(2)(g)). Police Officer Morris searched the vehicle (**Allegation I: Abuse of Authority – Search of Vehicle**, § 87(2)(g)). Police Officer Taveras used offensive language toward § 87(2)(b) (**Allegations J: Offensive Language – Word**, § 87(2)(g)). Police Officer Taveras spoke discourteously to individuals (**Allegation K: Discourtesy – Word**, § 87(2)(g)). Police Officer Morris allegedly threatened § 87(2)(b) and individuals with the use of force (**Allegations L and M: Abuse of Authority – Threat of Force**, § 87(2)(g)). Sergeant Haggerty allegedly seized § 87(2)(b)'s property (**Allegation N: Abuse of Authority – Seizure of Property**, § 87(2)(g)). No arrests or summonses resulted from this incident.

§ 87(2)(b) did not participate in this investigation, withdrawing his complaint during multiple phone conversations with the CCRB. § 87(2)(b) refused to provide identifying information for the other five individuals in this complaint which prevented the CCRB from being able to identify the victims. Therefore, the investigation was unable to obtain any civilian testimony for this case. However, given that the majority of this incident was captured on a collective six body-worn camera (BWC) videos, this case was investigated solely on the presence of video footage.

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Daniel Haggerty stopped individuals.

It is undisputed that officers stopped the individuals of a vehicle which was parked. It is also undisputed that Sergeant Haggerty was the supervisor on scene. § 87(2)(b) was not one of the individuals inside of the vehicle at the onset of the stop.

At 8:58 minutes into Police Officer Gallagher's BWC footage (Board Review 01) it shows the vehicle approximately a four-door car's door length from the curb (i.e. two to three feet). From 35 seconds to 55 seconds into Police Officer Morris' BWC footage (Board Review 09) § 87(2)(b) is shown walking from the side walk to the right side rear passenger door of the vehicle and speaking to the individuals in the vehicle. § 87(2)(b) was not § 87(2)(b) in the vehicle during the stop.

Sergeant Haggerty was interviewed at the CCRB on February 21, 2019 (Board Review 07). Sergeant Haggerty stated that, while driving down the block, he and the other officers observed a vehicle with tinted windows and a strong scent of marijuana emanating from it, which he stated became stronger the closer the officers got to the vehicle. Sergeant Haggerty initially believed during his CCRB interview that the vehicle was parked in a legal spot, and that the decision was made to approach the vehicle based on its tinted windows and strong smell of marijuana emanating from it. However, after reviewing BWC footage, Sergeant Haggerty ultimately could not recall whether the vehicle was parked legally.

Police Officer Morris was interviewed at the CCRB on December 19, 2018 (Board Review 02). Police Officer Gallagher was interviewed at the CCRB on January 10, 2019 (Board Review 03). Police Officer Jonathan Taveras was interviewed at the CCRB on January 19, 2019 (Board Review 04). Both Police Officers Morris and Gallagher stated they observed the vehicle stopped away from the curb and more towards the middle of the street, with Police Officer Morris approximating that the vehicle was ten feet away from the curb. Police Officer Taveras stated the vehicle was parked next to another vehicle, the latter of which was next to the curb. All three officers referred to the stopped vehicle as being double-parked.

According to NY CLS Vehicle and Traffic Law, Article 32, Section 1203 (Board Review 05), every vehicle stopped, standing, or parked upon a roadway should have its right-hand wheels of the vehicle parallel to and within twelve inches of the curb. According to New York City Rules, Title 34, Section 4-08 (Board Review 10), a vehicle is double parked when standing or parking on the roadway side of a vehicle stopped, standing or parked at the curb.

Sergeant Haggerty was the supervisor on scene at the onset of the stop, and thus the stop allegation is being pleaded against him. Police Officers Morris, Gallagher, and Taveras collectively referred to the vehicle as being double-parked. Police Officer Gallagher's BWC shows the vehicle parked at a distance exceeding 12 inches from the curb but not on the roadside of a parked vehicle. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation B – Abuse of Authority: Police Officer Andre Morris threatened to arrest individuals.

It is undisputed that Police Officer Morris threatened the individuals in the vehicle with arrest.

At 1:52 minutes into Police Officer Morris' BWC (Board Review 09) it shows him instruct the individuals in the vehicle to exit the vehicle. None of the individuals in the vehicle respond to Police Officer Morris. Police Officer Morris instructs the individuals to exit the vehicle again and § 87(2)(b) says, "This is not a stop." Police Officer Morris says, "I don't got time for this. Either I take all y'all back, since y'all don't want to listen, or like what do y'all want to do?" Police Officer Morris instructs the individuals to exit the vehicle again. Police Officer Morris

says, “The car has a strong odor of marijuana, you’re double-parked, let’s go.” Police Officer Morris asks the individual in the front passenger seat for his identification.

Police Officer Morris during his CCRB statement (Board Review 02) stated that he smelled marijuana the moment the front seat passenger rolled down his window. Police Officer Morris denied smelling the marijuana prior to the individual rolling down the window. Police Officer Morris explained that due to case law, the odor of marijuana allows officers to search a vehicle, and he asked the individuals to step out of the vehicle and asked that the occupants produce their identification. Police Officer Morris informed the individuals if they did not produce identification they would be brought back to the stationhouse to be identified. During his interview Police Officer Morris explained that the statement was not made as a threat of arrest; the civilians would have been brought back to the stationhouse for identification purposes if no identification was produced.

According to People v. Chestnut, 43 A.D.2d 260 (1974) (Board Review 06), The smell of marijuana, with nothing more, can be sufficient to provide officers with probable cause to search a vehicle and its occupants.

§ 87(2)(g) [REDACTED]

Allegation C – Abuse of Authority: Police Officer Andre Morris threatened to arrest § 87(2)(b)

It is undisputed that Police Officer Morris threatened § 87(2)(b) with arrest. It is also undisputed that § 87(2)(b) approached the vehicle and spoke with the individuals in the vehicle during the stop.

At 35 seconds into Police Officer Morris’ BWC footage (Board Review 09) § 87(2)(b) is shown walking up to the open right rear passenger door and speaking to the individuals in the vehicle. Police Officer Morris does not say anything to § 87(2)(b) and walks to the front passenger door. § 87(2)(b) is heard saying to Police Officer Morris, “Can you move away from me, bro? You’re getting me tight, bro.” Police Officer Morris says to § 87(2)(b) “What are you going to do about it?” § 87(2)(b) tells Police Officer Morris he is not going to do anything. § 87(2)(b) is then heard making the following statements to Police Officer Morris: “You dirty ass mother, nigga,” “Fuck is you talking about,” and, “Shit.” Police Officer Morris tells § 87(2)(b) “Curse at me one more time and see if I don’t arrest you for disorderly conduct. Play with me. Play with me. One more time. One more. One more time. One more time. See if I don’t lock you up for disorderly conduct. You think I’m playing with you.” § 87(2)(b)

§ 87(2)(b) while Police Officer Morris is heard saying this, is seen walking away from the vehicle and Police Officer Morris. There are no members of the public depicted as on lookers.

Police Officer Morris during his CCRB interview (Board Review 02), stated that § 87(2)(b) began using obscene language upon speaking with the civilians in the vehicle. Police Officer Morris acknowledged threatening § 87(2)(b) with arrest for disorderly conduct. Police Officer Morris stated that § 87(2)(b)'s behavior constituted disorderly conduct because of his violent and threatening behavior, as well his impeding in the investigation of the stop by making a police officer take his attention away from the individuals in the vehicle.

According to NY CLS Penal Law, Section 240.20 (Board Review 11), a person is guilty of disorderly conduct when intentionally causing public inconvenience, annoyance or alarm, or recklessly creating a risk thereof congregating with other persons and refusing to comply with a lawful order to disperse. People v. Gonzalez, 25 N.Y. 3d 1100 (2015) (Board Review 12), states that a cursing or ranting against police does not constitute disorderly conduct.

According to NY CLS Penal Law, Section 195.05 (Board Review 13), a person is guilty of obstructing governmental administration when intentionally obstructing, impairing, or perverting the administration of law by means of intimidation or physical force.

Police Officer Morris provided the explanation that he threatened § 87(2)(b) with arrest for disorderly conduct because of his violent and threatening behavior as well as impeding his investigation. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Andre Morris frisked individuals.
Allegation E – Abuse of Authority: Police Officer Andre Morris searched individuals.
Allegation F – Abuse of Authority: Sergeant Daniel Haggerty frisked individuals
Allegation G – Abuse of Authority: Sergeant Daniel Haggerty searched individuals.
Allegation I – Abuse of Authority: Police Officer Andre Morris searched the vehicle in which individuals were occupants.

It is undisputed that Sergeant Haggerty and Police Officer Morris collectively frisked and searched the occupants of the vehicle. It is also undisputed that Police Officer Morris searched the vehicle.

At 2:05 minutes into Police Officer Gallagher’s BWC footage (Board Review 01) he tells the individuals that the officers smelled marijuana – referred to by Police Officer Gallagher as “weed” – from their vehicle. An officer is then heard explaining that the car smells like marijuana, and one of the unidentified civilians asks, “So just because you smell marijuana, you’re gonna check our car for drugs?” At 2:19 minutes into Police Officer Morris’ BWC footage (Board Review 09) he states the vehicle has a strong odor of marijuana.

During their CCRB interviews Sergeant Haggerty (Board Review 07), Police Officer Morris (Board Review 02), and Police Officer Gallagher (Board Review 03), all stated they smelled marijuana emanating from the vehicle. Police Officer Gallagher and Sergeant Haggerty both stated that they smelled the marijuana from inside the patrol vehicle, while Police Officer Morris stated that he began smelling the marijuana once he was at the stopped vehicle and a window was rolled down. Police Officer Taveras (Board Review 04), who arrived as backup, denied smelling marijuana.

According to People v. Chestnut, 43 A.D.2d 260 (1974) (Board Review 06), The smell of marijuana, with nothing more, can be sufficient to provide officers with probable cause to search a vehicle and its occupants.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation H – Discourtesy: Police Officer Robert Gallagher spoke discourteously to individuals.

Allegation K – Discourtesy: Police Officer Taveras spoke discourteously to individuals.

It is undisputed that Police Officers Gallagher and Taveras spoke discourteously to the individuals from the vehicle.

At 2:50 minutes into Police Officer Gallagher's BWC footage (Board Review 01) the individuals are standing outside of the vehicle and being frisked. Police Officer Gallagher states, "First of all, we smelled the fucking weed from our car," as response a discussion with the individuals asking why they are being stopped.

At 1:22 minutes into Police Officer Taveras' BWC (Board Review 14), Police Officer Taveras is captured speaking to the individuals from the vehicle and says, "My shit right here, boy." At 2:38 minutes Police Officer Taveras says, "I like my, you know what I mean? My shit a little off." At 3:15 minutes Police Officer Taveras says, "Ew. Why y'all feening, bro? Like, all four of y'all saying the same shit? Come on, bro." At 4:40 minutes Police Officer Taveras says, "You're describing, like, half the fucking people."

During Police Officer Gallagher's CCRB interview (Board Review 03) he acknowledged making the statement to the individuals. He stated that the driver of the vehicle was irate about being made to exit the vehicle, and Police Officer Gallagher said, "First of all, we smelled the fucking weed from our car," in a joking manner in an attempt to calm the driver down.

During Police Officer Taveras' CCRB interview (Board Review 04) he acknowledged using discourteous language while speaking to the individuals. Police Officer Taveras admitted to saying the phrase "My shit right here," as a response to the vehicle's driver question if Police Officer Taveras would run during shots fired. He said, "My shit a little off," referencing his hat after being asked about it by the individuals. He said, "Saying the same shit," because all the individuals said the same phrase to a female who was walking past the vehicle. He said, "Half the fucking people," because the driver of the vehicle was asking about an officer in the command who was white and had multiple tattoos. He said that he used the discourteous language while speaking to the individuals because he was attempting not to be perceived by the individuals as an authority figure but did not intend to be profane.

According to NYPD Patrol Guide, Section 203-09 (Board Review 08) issued in 2016 which was in effect during the time of the incident, officers must be courteous and respectful when dealing with members of the public.

According to Disciplinary Case No. 79627/04 (Board Review 22), if in a crowd during a police encounter a civilian refuses to comply with a direct law enforcement order, the refusal could possibility ignite a dangerous street encounter with the crowd. During a such a situation where an officer is attempting to maintain control of the situation, an officer's use of impolite word does not rise to the level of misconduct.

§ 87(2)(g)

§ 87(2)(g)

Allegations J – Offensive Language: Police Officer Taveras made remarks to § 87(2)(b) based upon race.

It is undisputed that Police Officer Taveras said “boy” while speaking to the black individual who was in the driver seat of the vehicle.

At 1:22 minutes into Police Officer Taveras’ BWC (Board Review 14) he is captured speaking to § 87(2)(b) in a white t-shirt and a baseball cap, who the investigation determined to be the driver of the vehicle. Police Officer Taveras says to him, “My shit right here, boy.”

During Police Officer Taveras’ CCRB interview (Board Review 04) he acknowledged he and the driver had a conversation about a prior incident involving the individual and shots fired. Police Officer Taveras responded to the individual’s inquiry regarding him body armor by saying, “My shit right here, boy.” Police Officer Taveras admitted to using the word “boy” and provided the explanation that his use of the word “boy” was not meant in a derogatory manner but was meant to convey to the individual that Police Officer Taveras was “one of [them].”

According to NYPD Patrol Guide, Section 203-10 (Board Review 15), an officer is prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity or race.

§ 87(2)(g)

Allegation L – Abuse of Authority: Police Officer Andre Morris threatened § 87(2)(b) with the use of force.

Allegation M – Abuse of Authority: Police Officer Andre Morris threatened individuals with the use of force.

During the second telephone call with IAB while filing of this complaint (Board Reviews 17 and 18), § 87(2)(b) provided a photograph of Police Officer Morris and stated that Police Officer Morris told him and the other individuals that the next time he sees them, he is going to “violate” them. § 87(2)(b) did not provide any additional information regarding when the threat was made during the incident.

At 2:58 minutes into Police Officer Morris’ BWC (Board Review 09) § 87(2)(b) is captured saying to Police Officer Morris, “I’m not going to do nothing about it, bro...violate me.” Police Officer Morris is not captured using the word “violate” at any point during the incident. No police officer is captured using the word “violate” at any point during the incident in any of the obtained BWC videos.

During Police Officer Morris’ CCRB interview (Board Review 02) he was shown the photograph provided by § 87(2)(b) and confirmed that he was the individual in the photograph. Police Officer Morris denied threatening § 87(2)(b) or any civilian during the incident by telling them that he would “violate” them.

§ 87(2)(g)

Allegation N – Abuse of Authority: Sergeant Daniel Haggerty seized § 87(2)(b) s property.

It is undisputed that § 87(2)(b) s identification was found in the vehicle during the search. The identification was taken to the stationhouse and returned to § 87(2)(b) by officers not involved in the incident after § 87(2)(b) called 9-1-1 to report his identification card had been taken. The IAB Log reporting this incident indicates that the identification was returned to § 87(2)(b) after he called IAB to report this incident. The identification card was returned to him by an officer at an unknown time before 12:25 a.m.

At 1:45 minutes into Police Officer Taveras’ BWC (Board Review 14), Police Officer Morris is captured walking toward Sergeant Haggerty. Sergeant Haggerty, holding an identification card, asks the individuals if the individual on the steps is § 87(2)(b). One of the individuals says no. Police Officer Taveras calls out, “Is that you, § 87(2)(b).” Police Officer Taveras then says, “Oh, got him!” § 87(2)(b) asks Sergeant Haggerty for the identification and Sergeant Haggerty gives the identification to him. Sergeant Haggerty tells the individual he needs it back in order to run the identification. The individual returns the identification to Sergeant Haggerty.

At 5:58 minutes, the individuals in the vehicle ask for the identification and Police Officer Taveras says all the identifications cards have been returned.

During Sergeant Haggerty's CCRB interview (Board Review 07) he acknowledged that § 87(2)(b)'s identification was found during the vehicle search. § 87(2)(b) from the vehicle asked for the identification, but because the identification did not belong to any of the individuals at the stop, Sergeant Haggerty did not return the it to any of the individuals from the vehicle. Sergeant Haggerty said that the identification belonged to § 87(2)(b) who Sergeant Haggerty saw walk away from the location of the stop. Sergeant Haggerty stated that he did not attempt to return the identification to § 87(2)(b) because § 87(2)(b) had cursed at the officers as he left the location of the stop. Sergeant Haggerty made the supervisory decision to take the identification to the stationhouse to voucher it for § 87(2)(b) to retrieve it at the stationhouse. Sergeant Haggerty had arrived at the stationhouse and had begun to voucher the identification when § 87(2)(b) called 9-1-1 stating officers had taken his identification. Sergeant Haggerty gave the identification to a member of the over-night anti-crime team and instructed them to return the identification to § 87(2)(b). A voucher was not prepared. Sergeant Haggerty wrote in his memo book that an identification was found not belonging to any individual in the vehicle and was taken to the stationhouse for vouchering. There is no memo book notation regarding any attempts to voucher the identification card.

According to NYPD Patrol Guide, Section 218-19 (Board Review 16), an officer is to invoice property coming into police custody to determine its true owner.

It is undisputed that the identification that was found in the vehicle did not belong to any of the individuals that were in the vehicle at the beginning of the stop. § 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint which § 87(2)(b) has been a party (Board Review 19).
- Police Officer Morris has been a member of service for four years and has 15 prior CCRB allegations in five cases with no substantiated allegations. § 87(2)(g)
- Police Officer Gallagher has been a member of service for four years and has six prior CCRB allegations in four cases with no substantiated allegations. § 87(2)(g)
- Police Officer Taveras has been a member of service for six years and has 21 prior CCRB allegations in 11 cases with no substantiated allegations. § 87(2)(g)

- Sergeant Haggerty has been a member of service for ten years and has six prior CCRB allegations in three cases.
 - In CCRB Case #201307741, an allegation of Abuse of Authority for a vehicle search was substantiated and brought to charges by the CCRB. The NYPD found Sergeant Haggerty guilty and he forfeited five vacation days.
 - In CCRB Case #201400357, an allegation of Abuse of Authority for a stop was substantiated and formalized training was recommended by the CCRB board. The NYPD came to the disposition of instruction.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint or cooperate with the investigation. Summarize information in bullet pointed sentences with enclosures.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal conviction (Board Review 20)
- A Notice of Claim search request was submitted to the New York City Comptroller's Office on April 11, 2019, and on April 18, 2019, an email response was received from the New York City Comptroller's Office yielding negative results (Board Review 21).

Squad No. 12

Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date